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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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[REDACTED]

Date: **JAN 26 2012** Office: NEBRASKA SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. On November 18, 2011, this office sent the petitioner with a Request for Evidence (RFE) and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a wholesale trading company. It seeks to employ the beneficiary permanently in the United States as an information systems analyst pursuant to sections 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner did not submit evidence to establish its ability to pay the beneficiary the proffered wage from the priority date onward. The petition was denied accordingly. The petitioner filed a motion to reopen, the director reopened the proceedings and, following consideration of the evidence, affirmed his denial of the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On November 18, 2011, this office requested additional evidence in compliance with 8 C.F.R. § 204.5(g)(2) regarding the petitioner's ability to pay the proffered wage from the priority date onwards. The AAO explained that the evidence previously submitted, including a 2007 tax return, 2007 Form W-2 and 1099 to the beneficiary, and paystubs for January 1, 2008 to August 31, 2008, was insufficient to establish the petitioner's ability to pay the proffered wage from the July 28, 2007 priority date onwards. In addition, the AAO noted that the petitioner sponsored at least one additional worker and that it must demonstrate its ability to pay the proffered wage to all sponsored workers.

In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Because the petitioner failed to respond to the RFE in the specified 45 day time period, the AAO is dismissing the appeal.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).


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ORDER: The appeal is dismissed.